

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN GAY ANN MASOLO**, on April 2, 2001 at 3:08 A.M., in Room 137B Capitol.

ROLL CALL

Members Present:

Rep. Gay Ann Masolo, Chairman (R)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Bob Lawson, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Norma Bixby (D)
Rep. Gary Branae (D)
Rep. Nancy Fritz (D)
Rep. Verdell Jackson (R)
Rep. Hal Jacobson (D)
Rep. Larry Lehman (R)
Rep. Joe McKenney (R)
Rep. John Musgrove (D)
Rep. Alan Olson (R)
Rep. Ken Peterson (R)
Rep. Butch Waddill (R)
Rep. Allan Walters (R)
Rep. Merlin Wolery (R)

Members Excused: Rep. Jeff Mangan (D)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Nina Roatch, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJ 41, 3/29/2001; SB 493,
3/29/2001; SB 511, 3/29/2001;
HB 40, 3/29/2001; SB 495
Executive Action: HJ 41; SB 493; SB 495; SB 511;
HJ 40

HEARING ON HJ 41

Sponsor: REPRESENTATIVE JOAN ANDERSEN, HD 23, Carbon County

Proponents: Jack Gunderson, Helena
Lance Melton, MSBA
Eric Feaver, MEA-MFT
Lance Melton, MSBA
REPRESENTATIVE NORMA BIXBY, HD 5
REPRESENTATIVE LARRY LEHMAN, HD 87
Erik Burke, MEA-MFT

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE JOAN ANDERSEN, HD 23, Carbon County, said that the resolution is asking for an interim study to study the issue of school boundary changes. She has the information she acquired on SB 111 from SENATOR ALVIN ELLIS, JR. regarding the issue. That bill tabled in the Judiciary Committee, so the issue is in limbo. The Supreme Court said the legislature may constitutionally delegate its legislative functions to an administrative agency, but it must provide, with reasonable clarity, limits upon the agency's discretion and provide, the agency with policy guidelines. The territory transfers statute does not constrain a county superintendent the discretion in whether to grant or deny a transfer. Because of that decision, there needs to be some work done to see if the state can come into some kind of reasonable compromise on the school boundary issue.

Proponents' Testimony:

Lance Melton, MSBA, said that SB 111 was originally requested by his organization and it has changed a lot from when it was introduced to the time it was tabled. This is similar to the issue the legislature faced in the past with cross-county tuition. That bill was a breeze this session and he hopes that it comes out of Appropriations. The way that bill came about was work in the interim with a focused committee study authorized by the legislature and worked on by informed people, his association included. They are committed to working on this issue between now and the next session.

REPRESENTATIVE NORMA BIXBY, HD 5, Rosebud County and Big Horn County, said she has constituents on both sides of the issue. She would strongly encourage the study so that it could be fair for her two counties, but also for the rest of the state.

REPRESENTATIVE LARRY LEHMAN, HD 87, said he has constituents in the Vaughn Elementary School District and the Power School District and they represented both sides of the issue in **SB 111**. They were present in large numbers for the hearing on that bill. He strongly favors an interim committee to study the problem and hopefully come up with a solution beneficial to all.

Erik Burke, MEA-MFT, said they support the study of the bill.

Jack Gunderson, Helena said he would urge the committee to support the resolution. It has been an issue in his community for seventy years. They have taken it to the Supreme Court twice and he hopes with a study, it can be resolved once-and-for-all.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor: None

EXECUTIVE ACTION ON HJ 41

Motion: REP. OLSON moved that HJ 41 BE ADOPTED.

Discussion: None

Vote: Motion that HJ 41 BE ADOPTED carried unanimously.

HEARING ON SB 493

Sponsor: SENATOR FRED THOMAS, SD 31, Bitterroot

Proponents: Webb Grown, Montana Chamber of Commerce
Mary Whittinghill, Montana Taxpayers
Lance Melton, MSBA
Loran Frazier, SAM
Dave Puyear, MREA
Sarah Cobler, ASUM
Eric Feaver, MEA-MFT
Jeff Hindoien, Governor's Office

Opponents: None

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD 31, Bitterroot, stated that his bill has bipartisan support. It provides more money to education in both long term and short term and it puts more money into school coffers without raising taxes, without attacking the trust fund, or robbing of the school programs. It is a plan that has been put together by Secretary Bob Brown and Superintendent of Schools Linda McCulloch. This plan consists of two companion bills and a third bill as well. **SB 493** and **SB 495** each accomplishes a worthy goal in its own. The true beauty lies in what they can accomplish together. The bill before the committee puts a constitutional amendment on the ballot asking Montana voters to remove a restriction on the way money in the School Trust Fund can be invested. At present the Montana Board of Investments can invest the funds in the Education Trust Fund and the Coal Tax Trust Fund, which they generate modest amounts of income in the form of interest earnings. **SB 493** allows the board to invest a small portion of the fund in small corporate stocks, equities is commonly referred to, which would produce a much greater revenue stream in the form of capital gains in the future. He is not asking the committee to "gamble" a dollar of the School Trust Fund. There is strong evidence that not only would the passage of **SB 493** increase significantly increase revenue towards the schools, but it also would have no or little risk to the trust fund's values. The committee has heard that a diversified portfolio is the stronger and safer portfolio and one shouldn't put all your eggs in one basket. In a study he referred to, it was found that over a period of seven years, which includes the time period of the great depression, the author found that a portfolio investment composed of 15% in stocks and then 85% in bonds is actually less risky than our current portfolio of 100% in bonds. In that diversification, one is protecting your investments and getting more out of it. The idea of investing the School Trust Funds in equities is not a new or untested idea. Several western states, Alaska, Idaho, Washington, Wyoming, and North Dakota, have all done exactly the same kind of things. Montana voters have already approved and shown their approval of using the prudent rule in equity investments. Just last fall they approved the measure to allow the investment of a portion of the State Fund Assets and Surpluses in the stock market. The state does invest its retirement funds for public employees and teachers in equities as well as bonds. **HB 294** adjusted the retirement allowances. The legislature was able to do that because of the returns on equities within those funds. Legislators have the responsibility to do that for the children as well as in the retirement funding. It is time to make the Education Trust Fund work harder for Montana children.

Proponents' Testimony:

Linda McCullogh, Superintendent of Schools submitted written testimony. **EXHIBIT (edh74a01)**

Secretary of State Bob Brown stated that the bill provides some money for education that is sorely need in this session. It won't be available in this biennium. This is a long-term approach to the support of education. It is one that will provide an expanding and reliable source of income into the future. The real fruits of this measure may not be tasted by the state of Montana for another decade or so. The long-term component is the import part of the bill of what they are trying to do in putting the educational system on a more secure and stable source of funding in an expanding source of funding in the future. **SB 495** is the short-term component. A way of understanding how this bill might benefit the students of Montana is to recognize that if this proposal had gone into effect 25 years ago, and at that time if 25% of the Education Trust Fund had been invested in common stock, today the state would have approximately \$25 million more dollars for the purpose of supporting education than is available today. There isn't anything in the bill that limits the Board of Investments, should this bill pass in this legislative session and go to the people to approve the constitutional amendment, that says the investment has to be limited to 25%, maybe it should be up to the discretion of the legislature. The precedent for the 25% is that last fall the voters approved a ballot measure that allows up to 25% of the Workers Compensation Trust be invested in common stock, so they know there is that precedent already approved by the voters in the state. The concept is sound. The policies of the different states vary. There is no limitation in Wyoming. Idaho has targeted for 70% investment in stock and 30% in bonds. That might be a little bullish for members of the committee and legislature and the voters of the state of Montana. That is a policy decision that he hopes the members of the committee will make and enter into thoughtfully. They may not want a limitation or the committee may want a limitation of other than 25%. He believes Montana is in a better position than some states because our trust in Montana is to benefit from a more wise diversified investment of the trust fund money.

Jeff Hindoien, Governor's Office, said he wanted to express the support of Governor Martz for the bill. They are in full agreement with the idea of making more efficient use of the School Trust Fund for added revenue for the schools. It is a good idea.

Carroll South, Board of Investments, stated that they also support the bill. Two years ago he spoke on behalf of the State Fund when they were proposing a constitutional amendment. At that time he had colorful graphs that he showed the committee that indicated what the actual performance has been since 1976. The board began investing in stocks and pension funds and the actual performance records during that period of time if they had invested \$50,000,000 in their bond portfolio and \$50,000,000 in the stock portfolio in 1976, there would be hundreds of millions of dollars worth of difference in the value of the fund now. They chose not to do that this time because the stock market the last nine months has not treated money kindly. They do believe in the long run it is wise to diversify. They cannot do that now. They can only diversify the pension funds and the state Fund; in the long term, it is in the best interest of the State. A couple of points that should be made are: when you begin an investment in equities, your current income goes down. The average yield on the S&P 500 is 1.2%. The average coupon on the bonds that the state has is about 7.5%. The advantage is, over a long period of time, the state gets capital appreciation with the stocks. There is no capital appreciation with bonds. If you buy a ten million dollar twenty-year bond now, 20 years from now that is all you are going to get back, assuming the company doesn't go broke. This is alone, it not going to generate more income initially. That is what the second bill they will hear is all about. As the fiscal note indicates, their plan would be to begin investing, assuming that the voters approve and ratify the bill, School Trust Fund money in January 2003 and they would begin investing \$1.5 million a month. They would consult with the next session of the legislature relative to what the percent of the trust should be invested in stocks. They will not make that decision. That decision will not be made by the voters under the terms of the constitutional amendment, they would leave that decision to the 2003 Legislature. As a practical matter, this amendment removes all restrictions on the Board of Investments relative to investing any of its funds under management in equities. The board currently invests approximately nine billion dollars, most of which is pension fund and insurance trust, but as a practical matter there are only two funds that they think are advisable to invest in equities; the school trust is one and the permanent fund is another. That is relative to the size of those two funds. They would not begin investing the permanent Coal Tax Trust in equities until they get some guidance from the 2003 Legislature.

Joe Mazurek, D.A. Davidson & Company, said his company has no direct interest in this legislation, but a strong belief that the historical role afforded by investment in equities is prudent course that investors should take. He would hope the committee would take some comfort in the language of the bill that sets the standards by which the board must invest the funds. It is a prudent expert investing in a fiduciary capacity, as a trustee, guaranteeing the fund against loss or diversions. That is a fairly conservative standard that the board will have to meet in order to protect the funds of trusts.

Web Brown, Montana Chamber of Commerce, said they stand in support of the bill. They believe it is sound policy. It is capital investment for the purpose of education.

Mary Whittinghill, President, Montana Taxpayers Association, submitted written testimony. **EXHIBIT (edh74a02)**

Lance Melton, MSBA, said he speaks for **Loran Frazier, SAM**, also. Both organizations are in strong support of the bill.

Dick Croft, Commissioner, OCHE, said rarely does his study of the 16th Century pay off in issues before the legislature. This happens to be a case in which it does. Capitalism, banking, investments and double entry bookkeeping, all were created during that period of time. Please support the bill.

Sarah Cobler, Associated Students of the University of Montana, University of Montana-Western, said they are in strong support of the bill.

Dave Puyear, MREA, said they strongly support the bill. The long-term aspect of the bill plays out nicely in helping them support this idea that Montana is trying to do some things for education by stepping to the plate to address some of the problems that exist.

Eric Feaver, MEA-MFT, said they support the bill.

Jason Thielman, Chief Deputy Secretary of State, said he wished to give the committee some background on the education trust. He presented a slide show.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REPRESENTATIVE JACKSON asked the **SPONSOR** to give him some background in terms of how this amendment will appear on the ballot. The **SPONSOR** said the ballot language would be the language on the bill or the amended language if the committee chooses to amend the bill. It will be part of the voter information packet where there are proponents testifying for it and opponents testifying against it. Attorney General Mazurek is here, he can describe the part they do. **REPRESENTATIVE JACKSON** said he was looking at the first part of the bill where it goes into the percentages and he wants to know when the percentages will be locked in. The **SPONSOR** said that the language that is before them is out of the constitution. On the back page of the bill where the percentage is listed on line 9, this is the language that can be invested by the State Compensation Insurance Fund in equities. This was proposed a few years back at 15% and that failed. The last session put it on the ballot at 25% and it was approved by the voters. One thing that they may do over time is, if one invests 15% of the monies in equities, and then as they grow and hit the 25% reference for the State Fund, then they have to sell those off and they can't continue to let them grow there. So ten years from now, you have a cap in there that you may not really want. When one thinks of the cap, you think that is the most that I would invest there, but when you let it go off 10 and 20 years, you might not want to have the cap in there restricting the fund diversification. Until the voters approve the amendment, the guidelines will not be written.

REPRESENTATIVE JACKSON said when the voters would vote on the amendment, they would not be voting for a certain percent, it will be dealt with later. The **SPONSOR** said the committee can deal with it now, if they choose to do so.

REPRESENTATIVE LEHMAN had a question for **Secretary of State Brow**. There were several references made to where we would be had a bill such as this been in effect since the 1970's. Why wasn't there a law in effect. The **Secretary** said that is one of the tragedies of Montana history. In 1982 the legislature did refer a matter to the people, such as this, and they voted it down. They have voted these concepts down more than once. There is no cinch that if they get the two-third vote of both houses, that the people will vote for it this time. He believes they can make a compelling case that in the long term, it makes all the sense in the world to manage a large sum of money like this in a diversified way. Over the past 70 years, there has been a huge amount of money made in the stock market. The down turns of the stock market are always compensated for by the upsides of the market. The critical figure to remember is that this trust fund

has been around since 1889 and it will be around beyond our time.

REPRESENTATIVE KATHLEEN GALVIN-HALCRO, also had a question for the **Secretary**. She harkens back to Orange County in California and the predicament they got themselves into with investments. This measure has failed within the last 20 years. How are you going to convince the voting public this time? The **Secretary** said he would not have a problem doing that and he would be happy to go before any group, he has done it already, to expound on the idea. He said she might not feel comfortable doing that. There will be people who agree with her. The argument is overwhelming in favor of the bill as a long-term investment. He believes that if we enter into it carefully and prudently and manage the money in a long-term way and a diversified way that there is no question that it will generate more money for the schools in Montana. There will be people who bring up the Orange County problem where they invested too much, too fast and invested in too high tech stocks and they got killed. Montana should be able to learn from their mistakes.

The **SPONSOR** said he would ask that **Mr. South** could address the Orange County situation. **Mr. South** said that they know firsthand about the Orange County problem because Montana owned twenty-five million dollars worth of their bonds. Their bonds had been rated by S&P as investment grade. Montana held the bonds through their bankruptcy and we are paid off. The major difference between Orange County and the Montana Board of Investments is that Orange County invested heavily in derivatives, they are real exotic kinds of investments that our board knows very little about. More importantly, they borrowed money to do it. When they went bankrupt, they started looking at their books. They had seven billion dollars worth of real money, twenty-one billion dollars in their portfolio. It was a margin call. Montana does not do that. They do not invest in derivatives. Their proposal for this trust fund is to invest in an S&P 500 Index Fund. From the moment you put your first money in there, you own a piece of the 500 largest corporations in America. They are not market timers and he doesn't think that is something that has to be worried about.

Closing by Sponsor:

SENATOR THOMAS said he recommends the legislation. He is willing to look at any amendments. The Senate vote was very strong.

HEARING ON SB 511**Sponsor:** SENATOR FRED THOMAS, SD 31, Bitterroot**Proponents:** Webb Brown, Montana Chamber of Commerce
Mary Whittinghill, Montana Taxpayers
Eric Feaver, MEA-MFT**Opponents:** None**Opening Statement by Sponsor:**

SENATOR FRED THOMAS, SD 31, Bitterroot, stated the bill could be described as a better-late-than-never bill. It would generate up to \$860,000 a year for the university system by taking advantage of 1967 amendment to the Federal Enabling Act. This bill would allow 95% of money earned from timber harvesting on about 45,000 acres of school trust lands to be distributed directly to the beneficiaries of those lands, which is the campuses of Montana State, University of Montana and Montana Tech with locations in Missoula, Billings, Butte and Dillon. The reason they are referenced is they are the beneficiaries of the lands specifically addressed in this legislation. The remaining 5% of money would continue to be deposited in the School Trust Fund where it will continue to help grow the corpus of the trust. Under current law, all the revenue from timber harvesting on school trust lands dedicated to the universities must be deposited in the Permanent fund. He referred to the slide show again. It shows that Montana is building a tremendous trust fund but they are not getting it into the schools. The Federal Enabling Act in 1889, which granted Montana statehood and established the school trust, originally considered timber a nonrenewable resource and required all timber revenue to go into the Permanent Fund. Congress amended the Enabling Act in 1967, recognizing timber as a renewable resource and allowing distribution of timber revenue. In 1992, the legislature accepted the amendment to the Enabling Act and voted to allow the distribution of the timber revenue from land dedicated to elementary and secondary schools, but not the university system at that time. This bill does that by extending it to the universities. He doesn't know why they were overlooked in 1992. The bill is expected to generate approximately \$1.7 million each biennium for higher education. It may not sound like a great deal of money, but it is equivalent to about 2% tuition increase.

Proponents' Testimony:

Bob Brown, Montana Secretary of State, said this is a concept the legislature already approved for public schools. This legislation would make possible for \$1.7 million to go to higher education in this biennium at a time when money for higher education is in short supply and in a time when money is available that doesn't have to be generated by an increase in taxes. A further oversight occurred when this legislation was drafted over in the Senate, because other beneficiaries that weren't included in the Senate amendment are the Pine Hill School in Miles City and the School for the Deaf and Blind in Great Falls. They also could benefit from this bill if this committee wished to amend the bill to do that.

Dick Croft, Commissioner for Higher Education, said he is in support of the bill. He said he believes the figure will be \$750,000 a year which is about \$1.5 million in the biennium. The way the bill is written out, at least the way they read it, it would not be limited to the 95 - 5 split. That split represents the public school trust lands. As far as they can tell, this bill does not have the 95 - 5 split in it. They have had discussions with the **Secretary's** office and the Legislative Fiscal Division and there is another important feature of the bill that he would like to explain to the committee. They think there is flexibility in the language where they could direct the money either into the Permanent Trust or have it distributed. Why would they want to do that? What makes this bill especially complicated for them, is two things: the amount of money involved is much smaller than the K-12 package, and the money that flows to them from the permanent trust is currently committed to pay off bonds. Therefore, they are going to exercise some care in how they deal with this money and the trust to ensure that their bonding obligations and future pledges remain in good shape. They believe there is flexibility in the bill that would permit them to direct it in such a way to make sure that sufficient funds continue to go to the trust to keep their bonded indebtedness in good shape and also the flexibility to take advantage of the accelerating money they might receive from the trust.

Mary Whittinghill, President of Montana Taxpayers Association, submitted written testimony. See Exhibit (2)

Cary Hegreberg, Montana Wood Products Association, said this bill intrigues them. They have wondered for some time why the institutions of higher learning were not included in the legislation which authorized timber sales revenues to be distributed to public schools. He represents the companies that

pay for the timber that is harvested off the state trust lands. They have some solutions to offer for some of our state's problems. The state of Montana has about 600,000 acres of forested trust lands. About 10% of all of Montana land is forested. They produce timber as their primary revenue. Every year the state of Montana is selling about 42 million board feet of timber. That generates about \$10 million annually for all of the beneficiaries. On those lands they are going about 120 million board feet for harvesting annually. One might ask what is happening to the other 78 million board feet of timber. We lost a lot of it last summer in fires. If the state keeps this trend of harvesting 42 million board feet, when we are growing 120 million board feet, we are going to continue to see more fires. We can harvest annually, on a substantial basis, much more timber than we are currently harvesting and generate much more revenue to both K-12 and post education schools. He believes that the schools that will profit from the bill should be made more aware of how the revenues from these lands flow and they need to be a constituent. They need to be aware of where the revenue is coming from and how the lands are being managed on their behalf. It is good public policy and they think there are a lot of ways to continue to improve the management of resources funding schools.

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Eric Feever, MEA-MFT, said they are delighted to rise in favor of a bipartisan bill. It is positive to begin to put the state's assets to work. The amendments are important. There are the two institutions that can use the revenue flow and are not mentioned in the bill. Please consider the amendments.

Webb Brown, Montana Chamber of Commerce said they rise in support of the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REPRESENTATIVE WALTER MUSGROVE asked **Commissioner Croft**, since Northern is not a land-grant college, how do they fit into this picture? **Commissioner Croft** said they are out of this picture. He wished to state that \$1.7 million over the biennium is about two-thirds of a percent of increase in tuition.

Closing by Sponsor:

SENATOR THOMAS said there are amendments to allow the bill to include the Pine Hills School and the Montana School for the Deaf and Blind.

HEARING ON SB 495

Sponsor: SENATOR FRED THOMAS, SD 31, Bitterroot Valley

Proponents: Linda McCullogh, Montana State Superintendent of Schools

Bob Brown, Montana Secretary of State

Jeff Hindoien, Governor's Office

Webb Brown, Montana Chamber of Commerce

Mary Whittinghill, Montana Taxpayers Association

Eric Feaver, MEA-MFT

Jason Thielman, Chief Deputy of Secretary of State

Lance Melton, MSBA

Dave Puyear, MREA

Opponents: None

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD 31, Bitterroot Valley, said this legislation helps the legislature solve a more pressing problem and that is the adequate funding in the squeeze that our children and schools face right now. It generates about \$10.4 million for schools over the next two years. It does this by authorizing an irrevokable loan of no more than \$75 million dollars from the Coal Tax Trust Fund. The loan will be deposited into a newly created fund called a Guarantee Fund. It will be used to purchase the mineral royalties from active coal, oil and gas leases on school trust lands. These royalties will be used first to pay back the loan to the Coal Trust Fund, then they will be used to reimburse the general fund for any interest income lost because of the loan. Finally, any additional royalties will remain in the guarantee account where they will be available for distribution to schools as an automatic increase in the ANB entitlements. He realizes the plan is a bit complex and a little bit difficult to follow and that is because the school trust fund is subject to a lot of constitutional and statutory restrictions. It has taken a great deal of work, as well as scrutiny and input, of a lot of legal and financial minds to make this plan work within those parameters by law and by constitution. Under **SB 493** the School Trust Fund remains invalid as the constitution requires it to be. An important thing to remember about this

bill is that it will result in about \$10.4 million for the suffering schools this biennium. It does so with a loan that the bill itself says must be paid on a contractual basis. The legislature has authorized loans in the past for other items such as water management program and the Asarco cleanup sites. Montana's children and their futures are just as important as those other items. The beauty of this plan is that it makes money available for school today without adversely affecting the general fund, the Coal Tax Trust Fund or Montana's taxpayers.

Proponents' Testimony:

Linda McCullough, Superintendent of Public Instruction, submitted written testimony. **EXHIBIT (edh74a03)**

Bob Brown, Montana Secretary of State, said he is a member of the State Land Board. He and the Superintendent of Schools recognized that their obligation was to manage state lands to the highest income of the beneficiaries of those lands, the school children of the state of Montana. They made a discovery in the school trust itself in the fact that they felt it could be a great deal more pro-actively managed. That is what was before the committee in **SB 493**. That provides for some long term support for public education in Montana, but it doesn't help schools much in the interim. That is what led to this legislation. At first they thought they could invest some of the corpus of the school trust money in stock in this biennium, but if they did so, then they would have to take the money out of bonds, which accrue interest, and they would cut the income into the support of education in this biennium by however much they invested in stock in this biennium. They felt they needed to come up with some way to cover the cost of that loss. That is what led them in the direction of this legislation. If **SB 493** is approved by the legislature and placed on the ballot before the people, it won't be done until the General Election of 2002. There won't be any effect what so ever by that legislation in this biennium. They were still on the tracks of what they thought might help the income of public schools during this legislative session. That is why this bill comes before the committee. The estimate is that this bill would generate about \$5.2 million in each year of the biennium. It is not as much as many would like to see in support of public schools, but it significant revenue beyond the point of where we are now. It does two things. It busts no trusts, which is important to one of the major political parties and it raises no taxes, which is important to the other major political party. It conserves a strong bipartisan support.

Jeff Hindoien, Governor's Office, said he would urge the committee's support of the bill.

Jason Thielman, Chief Deputy Secretary of State, said he would like to cover the technical aspects of the bill. This legislation is not simple, but it is complex. The first thing the bill does is that the Department of Natural Resources and Conversations will purchase the mineral royalties that are owned by state lands and managed by the State Land Board using the proceeds for an irrevocable loan from the Coal Trust Fund. The mineral royalties are then placed in the guarantee fund. Those mineral royalties that have been placed in the guarantee fund will be distributed to three places: first, the common schools through automatic ANB increases in entitlements; second, to repay the loan to the Coal Trust Fund; third, to backfill the general fund for any lost of interest earnings from the Coal Trust Fund. He passed out a chart which has a explanation of how that money flow works. Under current law, the mineral royalties flow into the trust and legacy fund or the education fund. Under this bill, the first thing that would happen is the Coal Trust Fund would authorize a loan, not to exceed \$75 million, which would then be deposited in the Guarantee Fund, which is a newly created state special revenue account. The Guarantee Fund will then transfer those dollars into the Education Trust Fund. The Education Trust Fund then has passed over those mineral royalty revenues to the guarantee account. The guarantee account then owns that revenue stream and, in a sense, what has happened is we have purchased a 30-year annuity of royalty revenues streams. That royalty revenue stream will then be used for the three before mentioned purposes. The loan from the Coal Trust Fund will not exceed 30 years in the legislation. The loan payments will be a percentage of the mineral production on mineral royalty payments. In the upcoming biennium, the payment will be set at 0% of the mineral royalties to maximize income to schools in this biennium due to the necessary funding. In the following biennium, 2004-2005, 20% of those royalty revenues that have been purchased and placed in that state special revenue guarantee fund, will be used to pay back the loan. That will increase to 25% of the revenue royalties in fiscal years 2006 and 2011 and 34% of the royalties until the loan is paid in full. He explained some charts that were being presented visually.

EXHIBIT (edh74a04)

Eric Feaver, MEA-MFT, Montana University System, said they support the bill.

Webb Brown, Montana Chamber of Commerce, said they are in support of the bill.

Mary Whittinghill, President of Montana Taxpayers Association, submitted written testimony. **EXHIBIT (edh74a05)**

Lance Melton, MSBA, said they concur in the testimony given and support the bill.

Dave Puyear, MREA, said they strongly concur with their other education colleagues in support of the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REPRESENTATIVE OLSON asked **Mr. Thielman** if this money is to buy mineral rights that is to purchase the royalty payments up front. **Mr. Thielman** said that is right. **REPRESENTATIVE OLSON** asked how is that value calculated. **Mr. Thielman** said that **Carroll South** with the Board of Investments and **Curtis Nichols** with the Governor's Budget Office provided the actual calculation. They took the historical rate of return in the Trust and Legacy Fund, they built in an assumption that these royalty revenues cannot be predicted with absolute certainty, so you put in a risk factor for that and determine what that rate of return over the time would have been with that amount of money. You then apply that percentage into the future with each year of those royalties, at what they refer to in the fiscal world as a discount rate, to determine the present value of those sums. **RERESSENTATIVE OLSON** said this money will be used to buy the royalties from producing property not anticipated. **Mr. Thielman** said that is correct. **REPRESENTATIVE OLSON** asked, then basically this loan from the Coal Trust Fund will be used to set up the grantee fund with royalty funds going to pay back the Coal Trust Fund? **Mr. Thielman** said that would be one of three things it would be used to do.

REPRESENTATIVE PETERSON asked **Mr. Thielman** who owns the minerals. He answered, the minerals are owned by the state of Montana with the State Land Board as the trustees. The Representative asked him, who owns the royalties that they are going to buy. **Mr. Thielman** said the royalties are owned by the state of Montana. The actual owners would be the beneficiaries. **REPRESENTATIVE PETERSON** said that, if he understands it, the state of Montana now owns the royalties, but they will be purchased for the benefit of the school trust, is that right? **Mr. Thielman** said, that is correct.

REPRESENTATIVE LEHMAN asked **Mr. Thielman** if this, in effect, although it provides a short term resolution for school funding, it also has a long-term effect on school funding, is that correct? **Mr. Thielman** said that is correct.

REPRESENTATIVE GALVIN-HALCRO had a question for **Secretary Brown**. Will this take a three-quarter vote of the legislature to pass? **Secretary Brown** said yes. **REPRESENTATIVE GALVIN-HALCRO** asked him if he had 58 votes on his side of the aisle. He said they were near 100% in the Senate.

The **Chair** asked who came up with all this work in these bills? **Secretary Brown** said it is extremely complicated. They came up with several different charts and he isn't sure who did what.

REPRESENTATIVE OLSON had a question for **Secretary Brown**. Do you have any charts that show the effect this will have on the dollars going to the schools with the bill verses what it will look like without the bill? **Secretary Brown** said the effects this biennium would be \$10.4 million this biennium and the effects of the following biennium would be \$6.5 million dollars and then it gradually decreases and that is assuming that **SB 493** does not pass. If it does pass, then it gradually increases after about year five. The idea is that **SB 493** is going to pick up around year six. This bill will pick up in the front end of that period of time. **REPRESENTATIVE OLSON** asked if this bill passes and **SB 493** does not, we are not going to be any worse off? **Secretary Brown** said, correct.

Closing by Sponsor: None

HEARING ON HJ 40

Sponsor: **REPRESENTATIVE NORMA BIXBY, HD 5, Big Horn County and Rosebud County**

Proponents: **REPRESENTATIVE CAROL JUNEAU, HD 85, Glacier County, Blackfeet Reservation**

Opponents: **Eric Feaver, MEA-MFT**

Opening Statemnt by Sponsor:

REPRESENTATIVE NORMA BIXBY, HD 5, Big Horn County and Rosebud County, said the resolution is to do a study on the pre-professional teacher tests. The pre-professional skills tests are a series of standardized tests that measure reading, writing, mathematics and listening skills. The cost of each test is \$25

and if a student does not pass the test, he can retest, but there is a waiting period and he must also pay the fee again. The PPST test in Montana must be passed for teacher education candidates prior to being admitted into the teacher education program. The test is usually taken after two years of undergraduate preparation. If the student fails the test, the teacher education program, sometimes, allows students to continue the program and complete the course work, except for the student teaching experience. The student is not allowed to teach until the test is passed, therefore he cannot graduate without the test and completing his student teaching which means he is wasting his time at the university, their time and also the money. In some instances, some students who fail the test give up and go into some other field of work. Why do we need this resolution? Studies have been done that show minority candidates have traditionally scored poorer than their white peers on standardized tests. In an article, it stated that they found passing rates for females and males were comparable, but the story was quite different for minorities. On practice one, 82% of all white candidates passed as opposed to just 46% of the African American candidates. The study showed that white candidates pass at considerably higher rates than minority candidates. This would probably hold true for American Indians as well as individuals who come from low-income families. This resolution would let the authors know how all Montana students are doing on the PPST. It asks only basic questions to give a picture of what is happening. They want to know how many candidates take the test and what their cultural background, gender, economic status, age, what is the pass-fill rate by content area that is tested, how many repeat testing, what type of assistance the teacher education programs are providing to students to help them pass the test, and how many students successfully complete the program and become certified teachers. American Indian teachers make up only about 2% of Montana's teaching force. A standardized test does not show if an individual will be a good teacher and sometimes the test will keep an excellent teacher from becoming a one. To be a good teacher, you must have a love for children and not because one passed a test. The Representative doesn't believe our teacher programs allow for enough opportunities to truly determine if these students want to be teachers. The study might give some insight on recommendations that might be made to the Board of Regents or BPE for their consideration.

Proponents' Testimony:

REPRESENTATIVE CAROL JUNEAU, HD 85, Glacier County and the Blackfeet Reservation said she has a report titled, The Academic Quality of Prospective Teachers Impact of Admissions and Licensor Testing. It says the affect of testing on the diversity of the

teaching force is not promising. Worse, the lack of diversity cannot be simply ascribed to testing policies. The proportion of minorities individuals being attracted to teacher education is far smaller than the proportion of minority students in the United States classrooms. Despair at passing rates by race, exasperate this miss-match between the teacher and the student populations. Licensor testing takes a predominantly white population of potential teachers and creates an even more homogenous group. Her data suggests that without radical changes in the recruitment and adequate training of talented minorities, this trend will not change any time soon.

Opponents' Testimony:

Eric Feaver, MEA-MFT, said they are opponents because they are going to offer an amendment to the resolution. He believes the proponents are correct and the evidence in Montana doesn't require any national studies. We have evidence in the state that persons who would be otherwise qualified to teach in our classrooms, cannot pass the standardized examinations. The PPST is only slightly better, the way it is implemented in Montana, than its predecessor and that was a complete utter disaster when it comes to the preparation employment of Native American teachers. He wishes to delete the Legislative Council and insert the Montana Board of Public Education. He explained that the rest of the resolution would stay the same. **EXHIBIT (edh74a06)**

Informational:

Pete Donovan, OPI, said he is the Teacher Education and Accreditation Specialist in the OPI office and he will be happy to answer questions.

Questions from Committee Members and Responses:

REPRESENTATIVE LEHMAN asked **Mr. Donovan** is the information the resolution is calling for, available at present. **Mr. Donovan** said some of that information is available and his office does get annual reports from the Educational Testing Service. They breakdown the number of test takers by gender and maybe a few other areas. It gets to some of those things but a person would have to go through that data and aggregate it in some sort of a way and he would get a one-year report. There is no real summary data. **REPRESENTATIVE LEHMAN** asked him who administers the test. **Mr. Donovan** said there are testing sites around the state. Some of them are on the college campuses and they periodically administer these tests. Individuals register for the tests and the test sites have published dates and people have to pay in advance for the test. There is computer-based version of the

test that is available at centers where someone can call and make arrangements to take the test. **REPRESENTATIVE LEHMAN** said he is unfamiliar with the test and didn't realize that one had to pass it before the candidate can enter into a teacher program. Is this true at any branch of the university system? **Mr. Donovan** said, as a practical matter, all the teacher-ed institutions in Montana have administered the test as admission criteria since it is a basic skills test. They administer the test before students get into the beginning of the program. **REPRESENTATIVE LEHMAN** asked him to define "beginning of the program." **Mr. Donovan** said he believes the student takes it in the sophomore or junior year after he has completed a number of his general courses and then is ready to apply to the education college for teacher training.

REPRESENTATIVE MUSGROVE had a question for the **SPONSOR**. He asked if she considered the amendments friendly? The **SPONSOR** said she considers them to be favorable.

REPRESENTATIVE PETERSON also had a question for the **SPONSOR**. He asked how she envisions that the study will qualify American Indians to be teachers. He doesn't see how it fits in. The **SPONSOR** said that with any study done, data and information will be compiled and then you can see an issue with the language of the test because it is standardized and learn why certain individuals are not passing the test. That would be part of the study. They have found that low income people are having as much problem taking tests at American Indians are. **REPRESENTATIVE PETERSON** asked if they want to recommend changing the test. **REPRESENTATIVE BIXBY** said she doesn't think that would be a recommendation, but alternatives could be looked at for getting teachers into the classroom without this particular test.

REPRESENTATIVE PETERSON had a question for **Mr. Feaver**. He wanted him to expound on the questions he had asked the **SPONSOR**. He said that he concurred with everything she had said. The least desirable way to measure whether someone is qualified to teach, is with a standardized test. When they used the national standardized test for teachers, it became a joke for the 95% that passed it and for the 5% that didn't, they were devastated by it. He believes that the state wiped out almost a generation of Native American educators for no particularly good reason. The test had a communication stumbling block in it. **REPRESENTATIVE PETERSON** asked, why don't we do away with it? **Mr. Feaver** said there are some requirements that do need to be followed.

REPRESENTATIVE JACKSON had a question for **Mr. Donovan**. He asked him to describe the test. **Mr. Donovan** said it is a multiple choice test. There is a short writing component to be evaluated. When a person takes the test on the computer, he has to wait for

the evaluation on the written part. **REPRESENTATIVE JACKSON** asked him to tell him more about the written portion. **Mr. Donovan** knows there is a reading comprehension section. The person reads the material and then answers questions about what he has read. He is also asked to do some writing composition. It is evaluated in the elements of grammar and basic writing skills.

REPRESENTATIVE JACKSON asked if the candidate has to take another test after graduation before he can get his teaching certificate. **Mr. Donovan** said some states do have another test, but Montana does not currently require that.

REPRESENTATIVE GALVIN-HALCRO asked **Mr. Donovan**, are teachers sometimes given permissive licenses to use when they are unable to pass a portion of the test? **Mr. Donovan** said they do have a provisional certification in Montana which is for two years, for someone who has tried to pass the test and been unable to do so. At the end of the that time, if they have not passed the test, they cannot get a standard certificate. **REPRESENTATIVE GALVIN-HALCRO** said, are teachers sometimes certified without taking the practice test? **Mr. Donovan** said the state accepts GRE scores from other states. **REPRESENTATIVE GALVIN-HALCRO** said when she looks at page 2, line 16 of the bill that is looking at data that would be accumulated until September 15, 2002, in her mind that might be 600 test takers when she thinks of the number of students in the education program. She asked him is he thinks the data might be improved if this bill would go to December 30, 2002 or would that put a hindrance for the BPE or OPI to try and get all that information put together to include another possible 150 students that would be taking the test? **Mr. Donovan** said he has not considered the time-line of the bill. She deferred the question to **Mr. Feaver**. He said December 31, would be fine, the only drawback would be how quickly they want OPI to present their conclusions to the subsequent legislature. The information would not come to the legislature in January or February from the study. It might be March or early April.

Closing by Sponsor:

REPRESENTATIVE BIXBY said you cannot take the test and fail it and get a provision teaching certificate. She hopes the study will give an idea of what is happening in Montana in teacher preparation and how that test effects the completion rate of students who want to be teachers. The study may suggest other ways of preparing teachers and testing them. The study will assist the university system with their educational program.

EXECUTIVE ACTION ON SB 493

Motion: REP. OLSON moved that SB 493 BE CONCURRED IN.

Discussion:

REPRESENTATIVE WOLERY said it has a better chance of being passed by the public if it has a 30% maximum on the amount of investment.

REPRESENTATIVE JACKSON said Alaska does not have a percentage in it, what it has is a board that sets the policy on the types of investments and the procedures to be followed and it is very successful. He would hate to see a percentage in the constitution. It is easier to adjust the law. If the legislature could get it passed without a percentage, it would be better off. It would be easier to fine-tune the program.

REPRESENTATIVE GALVIN-HALCRO said she agrees that there should be a percentage in the bill. She believes it should be stated in the bill that there will be no derivatives or borrowing against the fund to make the purchases. It would be more acceptable by the voting public if they saw those words in the bill.

The **CHAIR** said that when the bill is put on the ballot, you can have only so many words.

REPRESENTATIVE GALVIN-HALCRO said she wants the words in the bill but it doesn't have to be on the ballot. It could be stated in the voter information.

REPRESENTATIVE WALTERS said the bill calls for a "prudent expert." We would not have derivatives with that kind of leadership. That should be enough.

REPRESENTATIVE PETERSON said that it also requires that person to act in a "fiduciary capacity." That means the same capacity as a trustee. He agrees the percent should not be in the constitution. It could be limited for the legislature.

REPRESENTATIVE LEHMAN said that he is curious why the Senate didn't note a maximum percentage. He believes there should be one.

REPRESENTATIVE PETERSON said he thinks there are some limitation on this when you look at page 2, line 7. It talks about not exceeding 25%.

REPRESENTATIVE OLSON asked **Mr. Thielman** to address the amounts and the kind of investments that can be made. **Mr. Thielman** said that **Secretary Brown** does not have a problem with the idea of putting a percentage cap in the bill. **SB 495** also has the legislation in it which allows for the investment of equities, should the constitutional amendment pass. An alternative approach could be, you could amend **SB 495** to put a percentage cap in statute which would accomplish a similar objective, but would give future legislators the flexibility to address that cap when circumstances change.

Vote: Motion that **SB 493 BE CONCURRED IN** carried unanimously.

REPRESENTATIVE LEWIS will carry the bill on the floor.

EXECUTIVE ACTION ON SB 495

Motion: REP. LEHMAN moved **SB 495**.

Discussion:

Connie Erickson passed out the amendments and explained them.
EXHIBIT (edh74a07)

Motion/Vote: REP. JACKSON moved that **AMENDMENTS TO SB 495, SB049504.AGP BE ADOPTED**. Motion carried unanimously.

Motion: REP. GALVIN-HALCRO moved that **SB 495 BE CONCURRED IN AS AMENDED**.

Discussion:

REPRESENTATIVE OLSON said it might be time for a conceptual amendment in Section 5 of the bill to limit the percentage.

REPRESENTATIVE GALVIN-HALCRO said she is not concerned about the percentage but is about the derivatives and the borrowing possibility. It would make it more palatable for the voting public if they knew that these possibilities do not exist.

REPRESENTATIVE JACKSON said he does not believe the committee has the expertise to set a percentage because there are all kinds of investments that can be made.

REPRESENTATIVE WOLERY said that he believes the committee has the expertise and it will not cause a problem to put a percentage in it now.

REPRESENTATIVE OLSON said he isn't sure about putting a percentage in it as a amendment.

REPRESENTATIVE PETERSON said he would be in favor of no cap on the percentage.

REPRESENTATIVE LEHMAN said he believes the cap will be placed on it when it is debated on the floor of the House.

Vote: Motion that **SB 495 BE CONCURRED IN** carried 17-1 with **Walters voting no.**

EXECUTIVE ACTION ON SB 511

Motion: REP. GALVIN-HALCRO moved that **SB 511 BE CONCURRED IN.**

Discussion:

REPRESENTATIVE LEHMAN moved that **SB 511** include the Montana School for the Deaf and the Blind and the Pine Hills School in the list of schools listed in the bill. **Connie Erickson** will write the amendment.

Discussion:

REPRESENTATIVE MCKENNEY said he was able to visit with **Secretaru Brown** after the hearing and he supports the amendment. The Representative also supports the amendment. He reminded the committee that all of the proponents supported the amendment also.

The **CHAIR** said she does not believe that **REPRESENTATIVE MATTHEWS** is in favor of this amendment. **Connie Erickson** said that as she reads the title of the bill, she is concerned that the amendment will not fit under the title. She will look into it before the bill appears on the floor.

REPRESENTATIVE LEHMAN withdrew his amendment.

Vote: Motion that **SB 511 BE CONCURRED IN** carried unanimously.

REPRESENTATIVE LEWIS will carry the bill on the floor.

EXECUTIVE ACTION ON HJ 40

Motion: REP. BIXBY moved that HJ40 BE ADOPTED.

Discussion:

REPRESENTATIVE MUSGROVE offered a conceptual amendment. He explained it and **Connie Erickson** will prepare it.

Motion/Vote: REP. MUSGROVE moved that **MUSGROVE CONCEPTUAL AMENDMENT BE ADOPTED. Motion carried unanimously.**

Motion: REP. MUSGROVE moved that **HJ 40 BE ADOPTED AS AMENDED.**

Discussion:

REPRESENTATIVE PETERSON said he still has a hard time seeing what the study is going to accomplish. He thinks that Indians can do anything they want to and they are as able as other people.

REPRESENTATIVE GALVIN-HALCRO said that what is trying to be accomplished is that the university system needs to institute a course in assisting students to pass the PPST.

REPRESENTATIVE LEHMAN said he feels the same as **REPRESENTATIVE PETERSON**. He would not want to have surgery done by a medical person who has not passed his doctor's exam.

REPRESENTATIVE MUSGROVE said they don't require representatives to pass a test. This is not about passing a test. People have anxieties when it comes to passing a test. This will find a alternative way of testing.

REPRESENTATIVE BRANAE said he is in favor of the bill.

REPRESENTATIVE BIXBY said that studies help create change. The test is timed and some people have a hard time translating the language to their language in the given time.

Vote: Motion that **HJ 40 BE ADOPTED AS AMENDED** carried 13-5 with **Lehman, Masolo, Peterson, Walters, and Wolery** voting no.

ADJOURNMENT

Adjournment: 6:00 P.M.

REP. GAY ANN MASOLO, Chairman

NINA ROATCH, Secretary

GM/NR

EXHIBIT (edh74aad)